



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON, D.C. 20370-5100

CRS  
Docket No: 4675-00  
21 November 2000

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C. 1552  
(b) MILPERSMAN  
(c) SECNAVINST 1910.4B

Encl: (1) DD Form 149 w/attachments  
(2) Case Summary  
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Navy, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected by changing the reason for discharge and the RE-4 reenlistment code assigned on 24 May 1999.

2. The Board, consisting of Messrs. Pfeiffer, Kastner, and Mackey, reviewed Petitioner's allegations of error and injustice on 15 November 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Petitioner enlisted in the Navy on 19 January 1999 at age 18. At the time of his enlistment he had completed 12 years of formal education.

d. On 12 May 1999, while Petitioner was still in recruit training, he received nonjudicial punishment for an unauthorized absence from 22 March to 23 April 1999, a total of 31 days.

e. On 19 May 1999 the commanding officer directed that Petitioner be separated by reason of misconduct due to commission of a serious offense. On 24 May 1999 Petitioner received an entry level separation by reason of misconduct. At that time he was assigned a reenlistment code of RE-4.

f. Petitioner argues that he should not have been separated for 31 days of unauthorized absence. He submits statements from a military recruiter and others that show he turned himself into his military recruiter on 20 April 1999, thus having only 29 days of unauthorized absence.

g. Article 1910-142 of reference (b) states that a discharge by reason of misconduct due to commission of a serious offense cannot be given for less than 30 days of unauthorized absence.

h. Reference (c) states that an individual may be separated by reason of best interest of the service if separation is appropriate but no other reason set forth in the reference covers the situation at hand. Individuals separated for this reason may receive a reenlistment code of RE-R1, RE-1, or RE-4.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial relief. The Board believes Petitioner did end his period of unauthorized absence on 20 April 1999 when he contacted his Navy recruiter. The Board thus concludes that the reason for discharge is inappropriate since he had only 29 days of unauthorized absence, and the reason should be changed to "best interest of the service", a non-stigmatizing reason for separation which is assigned when no other reason is appropriate. In this regard, the Board believes that had the command been aware that separation by reason of misconduct was improper, discharge action would have been initiated by reason of entry level performance and conduct given his period of unauthorized absence. However, the Board is unwilling to substitute this somewhat stigmatizing reason for separation without affording Petitioner notice and an opportunity to respond. Accordingly, the Board believes the nondescript reason of best interest of the service is now appropriate.

Although Petitioner requested that his reenlistment code be changed, the Board notes that an RE-4 reenlistment code is authorized by regulatory guidance for individuals discharged by reason of best interest of the service. Given his unauthorized absence of 29 days, the Board concludes that there is no error or injustice in his reenlistment code.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

**RECOMMENDATION:**

a. That Petitioner's naval record be corrected to show he received an entry level separation by reason of best interest of the service on 24 May 1999, vice by reason of misconduct.

b. That no further relief be granted.

c. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

d. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

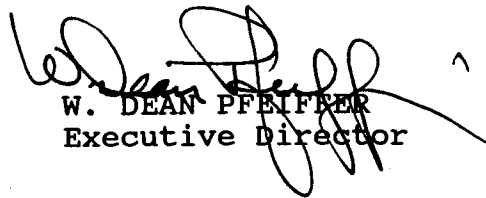
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder



ALAN E. GOLDSMITH  
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER  
Executive Director